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15 CITY AND COUNTY OF SAN FRANCISCO

16  
17 UNITED STATES DISTRICT COURT  
18  
19 NORTHERN DISTRICT OF CALIFORNIA

20 SELINA KEENE, MELODY FOUNTILA,  
21 MARK MCCLURE,

22 Plaintiffs,

23 vs.

24 CITY and COUNTY OF SAN FRANCISCO;  
25 LONDON BREED, Mayor of San Francisco in  
26 her official capacity; CAROL ISEN, Human  
27 Resources Director, City and County of San  
28 Francisco, in her official capacity; DOES 1-  
100,

Defendants.

Case No. 4:22-cv-01587-JSW

**ADMINISTRATIVE MOTION TO CONSIDER  
WHETHER CASES SHOULD BE RELATED**

**(Civil L.R. 3-12(b) and 7-11)**

Judge: Hon. Jeffrey S. White

Trial Date: None set.

## INTRODUCTION

The City and County of San Francisco (the “City”) respectfully asks the Court to consider whether the above-captioned action (the “*Keene* Action”) is related to two later filed actions: *Rodriguez v. City and County of San Francisco*, N.D. Cal. Case No. 3:23-cv-03139 (the “*Rodriguez* Action”); and *Yancey v. London Breed*, et al., N.D. Cal. Case No. 4:22-cv-09045-DMR (the “*Yancey* Action”).

The Court previously related seven other actions to the *Keene* Action: *Gozum v. City and County of San Francisco*, No. 4:22-cv-03975-JSW (the “*Gozum* Action”); *Guardado, et al. v. City and County of San Francisco*, No. 4:22-cv-04319-JSW (the “*Guardado* Action”); *Shaheed, et al. v. City and County of San Francisco*, No. 4:22-cv-06013-JSW (the “*Shaheed* Action”); *Debrunner, et al. v. City and County of San Francisco, et al.* (*Debrunner* Action), No. 4:22-cv-07455-JSW; *Cook v. City and County of San Francisco, et al.* (*Cook* Action); *Sanders v. San Francisco Public Library*, No. 23-cv-00211-JSW (the “*Sanders* Action”); and *Monegas v. City and County of San Francisco Department of Public Health* (the “*Monegas* Action”) (collectively “Related Vaccine Actions”). The recently filed *Rodriguez* and *Yancey* Actions bear a substantially similar relationship to *Keene* as the Related Vaccine Actions and likewise should be related.

Both the *Rodriguez* and *Yancey* Actions were brought by former City employees who allege they were terminated for failure to comply with the City’s COVID-19 vaccination policy. *See* Declaration of Adam M. Shapiro (“Shapiro Decl.”) Ex. 1 (*Rodriguez* Complaint); Shapiro Decl. Ex. 2 (*Yancey* Complaint). Like the plaintiffs in the *Keene* Action and many of the other Related Vaccine Actions — including *Gozum* and *Guardado* — *Rodriguez* asserts claims under the California Fair Employment and Housing Act (“FEHA”) and Title VII of the Civil Rights Act of 1964 (“Title VII”) based on the City’s alleged failure to grant a religious exemption from the City’s vaccination policy. Shapiro Decl. Ex. 1. *Yancey* is representing herself pro per and her pleading is not the model of clarity. *See* Shapiro Decl. Ex. 2. However, it appears, that *Yancey* too asserts FEHA<sup>1</sup> and Title VII

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<sup>11</sup> Yancey erroneously refers to FEHA as the “California Fair Housing Employment and housing Act.”

1 claims on similar grounds. *Id.* Additionally, like the Plaintiffs in *Guardado, Debrunner, and Sanders*,  
 2 Yancey asserts a First Amendment claim. *Id.*

3 The *Rodriguez* Action was filed on April 20, 2023 in San Francisco Superior Court. Shapiro  
 4 Decl. ¶ 3. On June 26, 2023, the City filed an answer and removed the case to this Court pursuant to  
 5 28 U.S.C. § 1441. *Id.* The *Yancey* Action was filed on December 21, 2022, but service was not  
 6 attempted until on or around June 12, 2023.<sup>2</sup> *Id.* ¶ 5. On July 5, 2023, Magistrate Judge Ryu granted  
 7 Defendants' Administrative Motion to Enlarge Time for Responding to Plaintiff's Complaint,  
 8 extending the deadline to file a responsive pleading to August 10, 2023. *Id.*

9 On May 12, 2023, the City filed a motion to consolidate the *Keene* Action and the Related  
 10 Vaccine Actions. Shapiro Decl. ¶ 6. The motion is now fully briefed and pending before this Court. *Id.*

## 11 DISCUSSION

12 Cases are related if:

- 13 (1) The actions concern substantially the same parties, property, transaction, or  
     event; and
- 14 (2) It appears likely that there will be an unduly burdensome duplication of  
     labor and expense or conflicting results if the cases are conducted before  
     different Judges.

16 N.D. Cal. Local Civil Rule 3-12(a). Whenever a party believes an action filed in this district may be  
 17 "related to an action which is or was pending in this District ..., the party must promptly file in the  
 18 lowest-numbered case an Administrative Motion to Consider Whether Cases Should be Related." *Id.*  
 19 Rule 3-12(b).

20 Here, the *Rodriguez* Action and *Yancey* Action concern substantially the same parties as the  
 21 *Keene* Action and the Related Vaccine Actions, as the City, its constituent departments, and/or City  
 22 employees are parties in to each of the actions. The plaintiff in the *Yancey* Action erroneously sued  
 23 Mayor London Breed and a number of other current or former City employees instead of her employer  
 24 (the City), even though supervisory employees are not subject to liability for alleged discrimination  
 25 under either FEHA or Title VII. *Holly D. v. California Institute of Technology*, 339 F.3d 1158, 1179  
 26

27 <sup>2</sup> Defendants in the *Yancey* Action contend service was improper, since Yancey did not attempt  
 28 to personally serve any of the Defendants, despite the fact that she appears to be suing all of them in  
     their personal capacities.

1 (9th Cir. 2003) (Title VII); *Reno v. Baird*, 18 Cal.4th 640, 644-645 (1998) (FEHA). Moreover,  
 2 Yancey's complaint does not allege any facts as to the individual defendants.

3 The plaintiffs in *Keene, Rodriguez, Yancey* and the other Related Vaccine Actions are all  
 4 current or former City employees who are challenging the City's vaccine mandate claiming that the  
 5 City failed to provide accommodations. If certified, the putative class in the *Guardado* Action could  
 6 potentially include the plaintiffs in the *Rodriguez* and *Yancey* Actions. The *Rodriguez* and *Yancey*  
 7 Actions, like *Keene* and the other Related Vaccine Actions concern substantially the same events, as  
 8 they arise out of challenges to the City's vaccine mandate, including the validity of the policy, both  
 9 facially and as applied, would necessarily affect the plaintiffs across all actions.

10 It is also "likely that there will be an unduly burdensome duplication of labor and expense or  
 11 conflicting results if the [*Rodriguez* and *Yancey* Actions were] conducted before [a] different Judge"  
 12 than the other Related Vaccine Actions. N.D. Cal. Local Civil Rule 3-12(a)(2). The *Keene* Action and  
 13 the seven other Related Vaccine Actions, including the *Guardado* Putative Class Action, challenge the  
 14 same policy and are all pending before the Honorable Jeffrey S. White. In the interest of judicial  
 15 efficiency, and to avoid conflicting decisions, the *Rodriguez* and *Yancey* Actions too should be heard  
 16 before Judge White.

## 17 CONCLUSION

18 Because the *Rodriguez* and *Yancey* Actions are related to *Keene* and the Related Vaccine  
 19 Actions, the Court should assert its case management authority over the *Rodriguez* and *Yancey*  
 20 Actions, find that they are related and reassign the cases to the Honorable Jeffrey S. White.

21 Dated: July 11, 2023

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25 By: /s/ Adam M. Shapiro  
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